

RULE 3:12
CODE OF PROFESSIONAL RESPONSIBILITY
FOR CLERKS OF THE COURTS

CANON 1. PURPOSE AND APPLICABILITY

This Code shall be known as the "Code of Professional Responsibility for Clerks of the Courts of the Commonwealth of Massachusetts." Its purpose is to define norms of conduct and practice appropriate to persons serving in the positions covered by the Code and thereby to contribute to the preservation of public confidence in the integrity, impartiality, and independence of the courts.

The word "Clerk-Magistrate" in this Code, unless otherwise expressly provided, shall mean anyone serving in the position of Clerk-Magistrate, Clerk, Register, Recorder, Assistant Clerk-Magistrate, Assistant Clerk, Assistant Register, or Deputy Recorder, in the Supreme Judicial Court, the Appeals Court, or a Department of the Trial Court of the Commonwealth, whether elected or appointed, and whether serving in a permanent or temporary capacity. The words "elected Clerk-Magistrate" shall also include a person who is appointed to complete the term of an elected Clerk-Magistrate. The word "court" in this Code shall mean the Supreme Judicial Court, the Appeals Court, a particular division of a Department of the Trial Court, or a particular Department of the Trial Court if the Department does not have divisions.

**CANON 2. COMPLIANCE WITH STATUTES
AND RULES OF THE COURT**

A Clerk-Magistrate shall comply with the laws of the Commonwealth, rules of the court, and lawful directives of the several judicial authorities of the Commonwealth. The words "judicial authorities" in this Code, unless otherwise expressly provided, shall mean the Justices of the Supreme Judicial Court and Appeals Court, the Chief Administrative Justice of the Trial Court, the Administrative Justices of the several Departments of the Trial Court, or Associate Justices of the Trial Court, as is appropriate under the circumstances.

CANON 3. PERFORMANCE OF DUTIES

A Clerk-Magistrate shall devote the entire time during normal court hours to the duties of his or her office, but may, according to established procedures, participate during that time in law-related educational and public service activities. An elected Clerk-Magistrate may participate during ordinary court hours in activities reasonably related to his or her duties as an elected Clerk-Magistrate. A Clerk-Magistrate shall not engage in the practice of law.

(A) Adjudicative and Administrative Responsibilities. In the performance of adjudicative and administrative responsibilities, the following additional standards shall apply:

(1) A Clerk-Magistrate shall be faithful to the law and maintain professional competence in it as it relates to the performance of his or her duties. A Clerk-Magistrate shall not be swayed by partisan interests, public clamor, or fear of criticism.

(2) A Clerk-Magistrate should seek to maintain order and decorum in proceedings.

(3) A Clerk-Magistrate should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others in official dealings, and should require similar conduct of those subject to his or her direction and control.

(4) A Clerk-Magistrate shall accord to every person who is legally so entitled the right to be heard in a proceeding in person or through his or her lawyer.

(5) A Clerk-Magistrate should diligently carry out his or her responsibilities and should dispose of them promptly.

(6) A Clerk-Magistrate shall facilitate public access to court records that, by law or court rule, are available to the public and shall take appropriate steps to safeguard the security and confidentiality of court records that are not open to the public.

(7) A Clerk-Magistrate may explain his or her own decisions made in the course of his or her official duties and may explain for public information the procedures of the court and the applicability of those procedures in particular circumstances. A Clerk-Magistrate should otherwise abstain from public comment about any pending or impending proceeding in any court, and should require similar abstention by subordinate court personnel.

(B) Administrative Responsibilities. A Clerk-Magistrate should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other court officials. In so doing, a Clerk-Magistrate should be cognizant of the need to employ efficient, businesslike methods and sound practices. A Clerk-Magistrate should organize and manage the business of the Clerk-Magistrate's Office with a view to the prompt and convenient dispatch of the business of the court. A Clerk-Magistrate should supervise subordinate personnel and arrange for their training. A Clerk-Magistrate shall make personnel appointments on the basis of merit, and in compliance with applicable personnel standards.

CANON 4. IMPARTIALITY AND DISQUALIFICATION

A Clerk-Magistrate shall perform the duties of Clerk-Magistrate impartially and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial branch of government.

(A) Appearance of Impartiality. A Clerk-Magistrate shall not convey the impression that any person is in a special position to influence the Clerk-Magistrate, and the Clerk-Magistrate should discourage others from suggesting that they are in a position to exert such influence.

(B) Personal Affairs. A Clerk-Magistrate shall conduct personal affairs in such a way as not to cause public disrespect for the court and the judicial system. A Clerk-Magistrate shall not engage in activities nor incur obligations which would tend to detract from the dignity of the Clerk-Magistrate's office or interfere or appear to interfere with official duty. A Clerk-Magistrate shall not engage in outside activities which would cast doubt on his or her capacity to decide impartially any issue that may come before the Clerk-Magistrate in any official capacity.

(C) Business Activities. A Clerk-Magistrate shall not enter into any business relationship which reasonably might create a conflict with the proper performance of his or her official duty or detract from the dignity of the office. A Clerk-Magistrate shall not use the influence of the office to promote his or her business interests or those of others.

(D) Activities to Improve the Law. A Clerk-Magistrate may use his or her title to engage in activity to improve the law, the legal system, or the administration of justice. A Clerk-Magistrate may appear at public hearings and may otherwise consult with governmental bodies or officials on such matters.

(E) Disqualification. A Clerk-Magistrate should disqualify himself or herself from serving in an adjudicative capacity in a proceeding in which the Clerk-Magistrate's impartiality might reasonably be questioned. A Clerk-Magistrate who would be so disqualified may, instead of withdrawing from the proceeding, disclose on the record the basis of disqualification. If, based on such disclosure, the parties, individually or through counsel, after consultation independent of the Clerk-Magistrate, agree in writing that the Clerk-Magistrate need not be disqualified, the Clerk-Magistrate may participate in the proceeding. The agreement, signed by all parties, shall be incorporated in the record of the proceeding.

CANON 5. OUTSIDE ACTIVITIES

A Clerk-Magistrate shall regulate outside and personal activities to minimize the risk of conflict with official duties:

(A) Personal Conduct. A Clerk-Magistrate should not engage in activities which might detract from the dignity of the office of Clerk-Magistrate or interfere with the performance of the duties of the office.

(B) Civic and Charitable Activities. A Clerk-Magistrate may participate in civic and charitable activities that do not reflect adversely on the Clerk-Magistrate's impartiality or interfere with the performance of his or her official duties. A Clerk-Magistrate may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for economic or political advantage of its members, subject to the following limitations:

(1) A Clerk-Magistrate shall not participate if there is a substantial likelihood that the organization, or a significant number of members of the organization, will be engaged in proceedings that would ordinarily come before the Clerk-Magistrate or the court in which the Clerk-Magistrate serves.

(2) A Clerk-Magistrate may solicit funds for any educational, religious, charitable, fraternal, or civic organization, but shall not use or permit the use of the prestige of the office for that purpose or solicit his or her staff for that purpose. A Clerk-Magistrate, however, may call his or her employees' attention to a general fund raising campaign such as the Commonwealth of Massachusetts Employees Campaign. A Clerk-Magistrate may attend but, except for an elected Clerk-Magistrate, shall not be a speaker or the guest of honor at an organization's fund raising event. A Clerk-Magistrate may be listed as an officer, director, or trustee of such an organization.

(C) Financial Activities.

(1) A Clerk-Magistrate shall not conduct outside business activities in the courthouse at any time nor shall a Clerk-Magistrate conduct any outside business activities anywhere during normal court hours. A Clerk-Magistrate shall refrain from financial and business dealings that tend to reflect adversely on the Clerk-Magistrate's impartiality, interfere with the proper performance of the position of Clerk-Magistrate, or involve the Clerk-Magistrate in transactions with lawyers or other persons likely to come before the court in which the Clerk-Magistrate is serving.

(2) Subject to the limitations of subsection 5(C)(1) and subsection 4(C) of this Code, a Clerk-Magistrate may hold and manage investments, including real estate, and engage in other remunerative activity.

(D) Fiduciary Activities.

(1) A Clerk-Magistrate shall not serve as an executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his or her family, and then only if such service will not interfere with the proper performance of the Clerk-Magistrate's duties. "Member of his or her family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the Clerk-Magistrate maintains or maintained a close familial relationship. As a family fiduciary, a Clerk-Magistrate is subject to the following restrictions:

(a) A Clerk-Magistrate shall not serve in any fiduciary capacity if it is likely that as a fiduciary the Clerk-Magistrate will be engaged in proceedings that would ordinarily come before the Clerk-Magistrate in a decision-making capacity and shall resign as a fiduciary if the estate, trust, or ward becomes involved in adversary proceedings in the court in which he or she is serving.

(b) While acting as a fiduciary, a Clerk-Magistrate is subject to the same restrictions on financial activities that apply to the Clerk-Magistrate in his or her personal capacity.

(2) A Clerk-Magistrate may serve as an executor, administrator, trustee, guardian, or other fiduciary for the estate, trust, or person of one who is not a member of his or her family provided that the Clerk-Magistrate was acting in the fiduciary position prior to April 1, 1990. Such fiduciary activity shall not be permitted if it interferes with the proper performance of the Clerk-Magistrate's duties and shall be subject to the provisions of subsection 5(D)(1)(a) and (b) of this Code.

(E) Appointments. Except for activities to improve the law, the legal system, or the administration of justice, as permitted by Canon 4(D), a Clerk-Magistrate shall not accept appointment within the geographical jurisdiction of the court in which he or she serves to a governmental committee, commission or other governmental position if there is a substantial likelihood that matters involving that committee, commission or other governmental position will come before the Clerk-Magistrate or the court in which the Clerk-Magistrate serves. A Clerk-Magistrate may, however, represent the United States, the Commonwealth of Massachusetts, or a locality on ceremonial occasions or in connection with historical, educational, armed services and cultural activities.

CANON 6. POLITICAL ACTIVITY AND ELECTIVE OFFICE

A Clerk-Magistrate, other than an elected Clerk-Magistrate, shall refrain from political activity and, in particular, shall not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(3) solicit funds for a political organization or candidate;
or

(4) hold or seek an elective public office if there is a substantial likelihood that matters involving that office will come before the Clerk-Magistrate or the court in which the Clerk-Magistrate serves. An appointed Clerk-Magistrate may become a candidate for an elected Clerk-Magistrate position. An appointed Clerk-Magistrate who holds elective office at the time of the adoption of this Code may continue to serve consecutive terms in that office.

CANON 7. EDUCATION

A Clerk-Magistrate should seek to improve his or her own magisterial and administrative capabilities. The Clerk-Magistrate should also seek to maintain and improve the knowledge, abilities, and skills of all personnel in his or her office.

CANON 8. NON-DISCRIMINATION

A Clerk-Magistrate shall not discriminate based on sex, race, color, creed, national origin, political affiliation, sexual orientation, age or handicap.

**CANON 9. COMPLIANCE WITH THE CODE OF PROFESSIONAL
RESPONSIBILITY FOR CLERKS OF THE COURTS**

A Clerk-Magistrate who has retired or resigned from the judicial branch shall not perform court-connected dispute resolution services except on a pro bono publico basis in any court of the Commonwealth for a period of six months following the date of retirement or resignation.